

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

AARON WILSON

13-cr-326-WY

**MEMORANDUM**

YOHN, J.

January 12, 2015

On September 30, 2014, I sentenced Aaron Wilson to 180 months in prison, the mandatory minimum under the Armed Career Criminal Act (ACCA). Wilson now moves pro se for reconsideration of his sentence, arguing that it violates the Eighth Amendment. Because I am empowered by Congress to reconsider a sentence in only a few narrow circumstances, none of which Wilson implicates here, I lack jurisdiction to consider this motion.

**I. Background**

On April 9, 2014, Wilson was convicted by a federal jury of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g). On September 30, 2014, I sentenced him to 180 months in prison, having found that his prior convictions subjected him to this mandatory minimum under the ACCA. The next day, October 1, I filed his judgment of conviction, and on October 8, Wilson filed a notice of appeal with the Third Circuit. On October 14, Wilson filed with this court a pro se motion to reconsider his sentence, contending that the ACCA mandatory minimum “as applied” to him is unconstitutional under the Eighth Amendment.

**II. Discussion**

Generally, a criminal defendant may file a motion for reconsideration. Indeed, a defendant is permitted to submit such a motion based on “traditional and virtually unquestioned

practice.” *Gov’t of Virgin Islands v. Lee*, 775 F.2d 514, 519 (3d Cir. 1985) (citation omitted).

But in the sentencing context, Congress has circumscribed the power of district courts to hear such a motion—a limitation on power leaving me without jurisdiction to hear Wilson’s motion.

Under 18 U.S.C. § 3582(c), a district court “may not modify a term of imprisonment once it has been imposed” except in three circumstances, two of which are irrelevant here. One exception does not apply because it requires a motion from the “Director of the Bureau of Prisons.” *Id.* § 3582(c)(1)(A). The other necessitates a change in the applicable sentencing guidelines, a circumstance that Wilson does not raise in his motion. *Id.* § 3582(c)(1)(2).

The third exception, though possibly applicable, cannot apply here because the time to consider it has passed. Under § 3582(c)(1)(B), “the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of criminal procedure.” Rule 35(a) allows a court to “correct a sentence that resulted from arithmetical, technical, or other clear error.” Wilson alleges no such error; he requests only that I reconsider my decision to sentence him as an armed career criminal. Yet even if Wilson proved an “arithmetical, technical, or other clear error,” I must correct it “[w]ithin 14 days after sentencing.” *Id.*<sup>1</sup> This time limitation is jurisdictional, meaning once it has passed, as it has here, I lack jurisdiction to consider the motion—let alone rule on it. *See United States v. Higgs*, 504 F.3d 456, 463 (3d Cir. 2007) (“[The] time requirement of Rule 35(a) is jurisdictional.”).

For these reasons, I am without jurisdiction to consider Wilson’s motion, although I note that this does not mean he has forfeited his Eighth Amendment argument. On October 8, he filed a timely notice of appeal with the Third Circuit, preserving his right to test that argument there.

An appropriate order follows.

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<sup>1</sup> For the sake of thoroughness, I highlight that I would have had the power to correct such an error within 14 days of sentencing even though Wilson filed this motion *after* he filed his October 8 notice of appeal with the Third Circuit. *See* Fed. R. App. P. 4(b)(5) (“The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a) . . .”).

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**ORDER**

AND NOW, this 12th day of January 2015, **IT IS HEREBY ORDERED** that, upon consideration of the defendant's motion for sentencing reconsideration (Doc. No. 82), the defendant's motion is **DENIED**.

s/William H. Yohn Jr.  
William H. Yohn Jr., Judge